



6820-C9-P

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

5 CFR Part 9801

RIN 3219-AA00

Privacy Act Regulations

AGENCY: Council of the Inspectors General on Integrity and Efficiency

ACTION: Final rule.

SUMMARY: The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is issuing this final rule to establish its procedures relating to access, maintenance, disclosure, and amendment of records that are in a CIGIE system of records under the Privacy Act of 1974 (Privacy Act). This final rule also establishes rules of conduct for CIGIE personnel who have responsibilities under the Privacy Act.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Atticus J. Reaser, General Counsel, CIGIE, (202) 292-2600.

SUPPLEMENTARY INFORMATION:

Background Information

CIGIE published a proposed rule in the Federal Register, 81 FR 61628, September 7, 2016, to provide the procedures and guidelines under which CIGIE will implement the Privacy Act. The proposed rule provided a 60-day comment period, which ended on November 7, 2016. CIGIE received one timely and responsive comment, which was submitted by an individual. The comment supported the regulation and reflected no suggested changes.

CIGIE is making one technical citation format change. The citation to “the Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (codified as amended at 5 U.S.C. app)” reflected in the proposed rule is being changed in this final rule to “the Inspector General Act of 1978, as amended, 5 U.S.C. app.” This is a technical modification and does not reflect a substantive change. There were no other modifications made to the proposed rule. For the reasons set forth herein and in the preamble to the proposed rule, CIGIE is publishing this final rule.

Executive Orders 12866 and 13563

In promulgating this rule, CIGIE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this rule is not "significant" under Executive Order 12866.

Regulatory Flexibility Act

These regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided by the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by OMB is not required.

Federalism (Executive Order 13132)

This rule does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 5 CFR Part 9801

Information, Privacy, Privacy Act, Records.

For the reasons set forth in the preamble, CIGIE adds part 9801 to title 5 of the Code of Federal Regulations as follows:

PART 9801--PRIVACY ACT REGULATIONS

Subpart A--General Provisions

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9801.301 Requests for amendment of record.

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9801.303 Appeal from adverse determination on amendment.

9801.304 Response to appeal of adverse determination on amendment; disagreement statements.

9801.305 Assistance in preparing request to amend a record or to appeal an initial adverse determination.

Authority: Section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; 5 U.S.C. 301, 552a; 31 U.S.C. 9701.

Subpart A--General Provisions

§ 9801.101 Purpose and scope.

This part contains the regulations of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) implementing the Privacy Act of 1974, 5 U.S.C. 552a. This part sets forth the basic responsibilities of CIGIE with regard to CIGIE's compliance with the requirements of the Privacy Act and offers guidance to members of the public who wish to exercise any of the rights established by the Privacy Act with regard to records maintained by CIGIE. These regulations should be read in conjunction with the Privacy Act, which explains in more detail individuals' rights.

§ 9801.102 CIGIE organization.

(a) Centralized program. Except as stated in paragraph (b) of this section, CIGIE has a centralized Privacy Act program, with one office receiving and coordinating the processing of all Privacy Act requests to CIGIE.

(b) Integrity Committee records. The Integrity Committee of CIGIE (IC) is the single exception to CIGIE's centralized Privacy Act program. By statute, all records received or created by the IC in fulfilling its responsibilities are collected and maintained separately as IC records by the official of the Federal Bureau of Investigation (FBI) serving on the IC. Currently, all such records are maintained by the FBI in the FBI's Central Records System and are subject to the system of records notices and the Privacy Act policies and regulations applicable to that system. See 28 CFR part 16, subpart D. Accordingly, except as stated in paragraph (c) of this section, because IC records are not maintained by CIGIE, this part does not apply to requests or appeals regarding IC records.

(c) Acceptance of requests and appeals. CIGIE will accept initial requests or appeals regarding CIGIE records and regarding IC records maintained by the FBI on behalf of the FBI. Requests and appeals regarding IC records will be referred to the FBI for processing and direct response to the requester by the FBI.

§ 9801.103 Definitions.

(a) For purposes of this part the terms individual, maintain, record, routine use, and system of records, shall have the meanings set forth in 5 U.S.C. 552a(a).

(b) CIGIE means the Council of the Inspectors General on Integrity and Efficiency and includes its predecessor entities, the Executive Council on Integrity and Efficiency and the President's Council on Integrity and Efficiency.

(c) Days, unless stated as "calendar days," are working days and do not include Saturdays, Sundays, or Federal holidays.

(d) IC means the CIGIE Integrity Committee established under section 11(d) of the Inspector General Act of 1978, as amended, 5 U.S.C. app. (Inspector General Act).

(e) Request for access to a record means a request made under Privacy Act subsection (d)(1).

(f) Request for amendment of a record means a request made under Privacy Act subsection (d)(2).

(g) Request for an accounting means a request made under Privacy Act subsection (c)(3).

(h) Requester means an individual who makes a request for access, a request for amendment, or a request for an accounting under the Privacy Act.

§ 9801.104 Rules for determining if an individual is the subject of a record.

An individual seeking to determine if a specific CIGIE system of records contains a record pertaining to the individual must follow the procedures set forth for access to records in § 9801.201(a), (b)(1) and (2), (c), and (d). A request to determine if an

individual is the subject of a record will ordinarily be responded to within 10 days, except when CIGIE determines otherwise, in which case the request will be acknowledged within 10 days and the individual will be informed of the reasons for the delay and an estimated date by which a response will be issued.

§ 9801.105 Employee standards of conduct.

CIGIE will inform its employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions.

Unless otherwise permitted by law, an employee of CIGIE shall:

- (a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of CIGIE;
- (b) Collect information about an individual directly from that individual whenever practicable when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;
- (c) Inform each individual from whom information is collected of:
 - (1) The legal authority to collect the information and whether providing it is mandatory or voluntary;
 - (2) The principal purpose for which CIGIE intends to use the information;
 - (3) The routine uses CIGIE may make of the information; and
 - (4) The effects on the individual, if any, of not providing the information;

(d) Maintain no system of record without public notice and notify appropriate CIGIE officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by CIGIE in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the Freedom of Information Act, 5 U.S.C. 552 (FOIA), make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by CIGIE to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone. No record contained in a CIGIE system of record shall be disclosed to another person, or to another agency outside CIGIE, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless the disclosure is otherwise authorized by the Privacy Act; and

(j) Notify the appropriate CIGIE official of any record that contains information that the Privacy Act does not permit CIGIE to maintain.

§ 9801.106 Use and collection of social security numbers.

(a) No denial of right, benefit, or privilege. Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is required by Federal statute; and

(b) Notification to individual. Individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) The statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

§ 9801.107 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Subpart B--Access to Records and Accounting of Disclosures

§ 9801.201 Requests for access.

(a) How addressed. A requester seeking access to records pertaining to the requester in a CIGIE system of records should submit a written request that includes the words "Privacy Act Request" on both the envelope and at the top of the request letter to

the Executive Director, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, DC 20006.

(b) Description of records sought. (1) A request should contain a specific reference to the CIGIE system of records from which access to the records is sought. Notices of CIGIE systems of records subject to the Privacy Act are published in the Federal Register, and copies of the notices are available on CIGIE's website at www.ignet.gov, or upon request from CIGIE's Office of General Counsel.

(2) If the written inquiry does not refer to a specific system of records, it must describe the records that are sought in enough detail to enable CIGIE personnel to locate the system of records containing them with a reasonable amount of effort.

(3) The request should state whether the requester wants a copy of the record or wants to examine the record in person.

(c) Verification of identity. A requester seeking access to records pertaining to the requester must verify their identity in their request. The request must state the requester's full name, current address, and date and place of birth. The requester must sign the request and the signature must either be notarized or state, "Under penalty of perjury, I hereby declare that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of Title 18, United States Code (U.S.C.), Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years, or both; and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of Title 5, U.S.C., Section 552a(i)(3) as a misdemeanor and by a fine of not more than \$5,000." In order to help the identification and location of requested records, the requester may optionally include their social

security number. No identification shall be required if the records are required by 5 U.S.C. 552 to be released.

(d) Verification of guardianship. When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent for access to records about that individual, the requester must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the social security number of the individual;

(2) The requester's identity, as required in paragraph (c) of this section;

(3) That the requester is the parent or guardian of that individual, which may be established by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(4) That the requester is acting on behalf of that individual in making the request.

§ 9801.202 Response to requests.

A request for access will ordinarily be responded to within 10 days, except when CIGIE determines otherwise, in which case the request will be acknowledged within 10 days and the requester will be informed of the reasons for the delay and an estimated date by which a response will be issued. A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 9801.207, if applicable;

(d) The name and title of the official responsible for the response; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 9801.203 Granting access.

(a) Means of access. (1) The methods for allowing access to records, when such access has been granted by CIGIE, are:

(i) Examination in person in a designated office during the hours specified by CIGIE; or

(ii) Providing copies of the records.

(2) When a requester has not indicated whether he wants a copy of the record or wants to examine the record in person, CIGIE may choose the means of granting access. However, the means chosen should not unduly impede the requester's right of access. A requester may elect to receive a copy of the records after having examined them.

(b) Accompanying individual. If the requester is granted in person access to examine the records, the requester may be accompanied by another individual of the requester's choice during the course of the examination of the records. CIGIE may

require the requester to submit a signed statement authorizing the accompanying individual's access to the records.

(c) Certified copies. CIGIE will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by CIGIE.

(d) Original records. When the requester seeks to obtain original documentation, CIGIE reserves the right to limit the request to copies of the original records.

§ 9801.204 Special procedures: Medical records.

In the event CIGIE receives a request pursuant to § 9801.201 for access to medical records (including psychological records) whose disclosure CIGIE determines would be harmful to the individual to whom they relate, it may refuse to disclose the records directly to the requester but shall transmit them to a physician designated by the requester.

§ 9801.205 Appeals from denials of requests for access to records.

(a) How addressed. A requester may submit a written appeal of the decision by CIGIE to deny an initial request for access to records or a no record response to the Chairperson, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, DC 20006. The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of appeal.

(b) Deadline and content. The appeal must be received by CIGIE within 60 days of the date of the letter denying the access request or reflecting the no record finding and should contain a brief description of the records involved or copies of the relevant

correspondence from CIGIE. The appeal should attempt to refute the reasons given by CIGIE in support of its decision to deny the initial request for access or no record finding.

§ 9801.206 Response to appeal of a denial of access.

(a) Access granted. If the Chairperson or the Chairperson's designee determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) Denial affirmed. Any decision that either partially or fully affirms the initial decision to deny access or no record finding shall inform the requester of the right to seek judicial review of the decision in accordance with the Privacy Act (5 U.S.C. 552a(g)).

(c) When appeal is required. If a requester wishes to seek review by a court of any adverse determination or denial of a request, the requester must first appeal it under § 9801.205.

§ 9801.207 Fees.

(a) No fees for most services. Services for which fees will not be charged:

(1) The search and review time expended by CIGIE to produce a record;

(2) The first copy of the records provided; and

(3) CIGIE making the records available to be personally reviewed by the requester.

(b) Fees for additional copies. When a requester requests additional copies of records, CIGIE will assess the requester a fee of \$.20 per page. CIGIE will bill requester in arrears for such fees, except as follows:

(1) If the total fee for additional copies amounts to more than \$25.00, the requester will be notified of the fee amount. Except as specified in paragraph (b)(2) of this section, upon requester's written agreement to pay the assessed fees, CIGIE will provide the additional copies without prepayment of such fees (i.e., payment will be accepted in arrears).

(2) An advance payment before additional copies of the records are made will be required if:

(i) CIGIE determines that the total fee to be assessed under this section exceeds \$250.00. When such a determination is made, the requester will be notified of the determination and will be required to submit an advance payment of an amount up to the total fee. The amount of the advanced payment will be at the sole discretion of CIGIE and will be based, in part, on whether requester has a history of prompt payment of Privacy Act fees. If the required advanced payment is an amount less than the total fee, requester will be required to submit a written agreement to pay any fees not paid in advance; or

(ii) The requester has previously failed to pay a previously assessed Privacy Act fee in a timely fashion (i.e., within 30 days of the date of the billing). In such cases, the requester will be required to pay the full amount outstanding plus any applicable interest as provided by paragraph (c) of this section and to make an advance payment of the full amount of the determined fee before CIGIE begins to process a new request for additional copies.

(c) Interest charges. For additional copies provided to requester that result in fees assessed, CIGIE will begin levying interest charges on an unpaid balance starting on the

31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed under 31 U.S.C. 3717 and will accrue from the date of the billing.

(d) Payment address. Payment of fees should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States and mailed or delivered to: Privacy Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, DC 20006.

§ 9801.208 Requests for accounting of record disclosures.

(a) How made and addressed. Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), a requester may request an accounting of any disclosure that has been made by CIGIE to another person, organization, or agency of any record about the requester. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. A requester seeking an accounting of record disclosures must follow the procedures set forth for access to records in § 9801.201(a), (b)(1) and (2), (c), and (d).

(b) Where accountings are not required. CIGIE is not required to provide accountings to requesters where they relate to:

(1) Disclosures for which accountings are not required to be kept, including disclosures that are made to officers and employees of CIGIE and disclosures that are made under the FOIA. For purposes of this part, officers and employees of CIGIE

includes, in part, CIGIE's membership, as addressed in section 11 of the Inspector General Act, when such members are acting in their capacity as CIGIE members;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

Subpart C--Amendment of Records

§ 9801.301 Requests for amendment of record.

(a) How addressed. A requester seeking to amend a record or records pertaining to requester in a CIGIE system of records should submit a written request that includes the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter to the Executive Director, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, DC 20006. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) Contents of request. A request to amend a record in a CIGIE system of records must include:

(1) The name of the system of records and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the requester having gained access to the record in accordance with the provisions concerning access to records as set forth in subpart B of this part, copies of previous

correspondence between the requester and CIGIE will serve in lieu of a separate description of the record.

(2) The exact portion of the record the requester seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the requester believes the record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit CIGIE to not only to understand the requester's basis for the request, but also to make an appropriate amendment to the record.

(c) Burden of proof. The requester has the burden of proof when seeking the amendment of a record. The requester must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(d) Identification requirement. When the requester's identity has been previously verified pursuant to § 9801.201, further verification of identity is not required as long as the communication does not suggest a need for verification. If the requester's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 9801.201.

§ 9801.302 Response to requests.

(a) Time limit for acknowledging a request for amendment. To the extent possible, CIGIE will acknowledge receipt of a request to amend a record or records within 10 working days.

(b) Determination on an amendment request. The decision of CIGIE in response to a request for amendment of a record in a system of records may grant in whole or deny any part of the request to amend the record.

(1) If CIGIE grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the requester. To the extent an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If CIGIE denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the requester in order to process the appeal.

§ 9801.303 Appeal from adverse determination on amendment.

(a) How addressed. A requester may submit a written appeal of the decision by CIGIE to deny an initial request to amend a record in a CIGIE system of records to the

Chairperson, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, DC 20006. The words “Privacy Act Appeal” should be included on the envelope and at the top of the letter of appeal.

(b) Deadline and content. The appeal must be received by CIGIE within 60 days of the date of the letter denying the request and should contain a brief description of the record(s) involved or copies of the correspondence from CIGIE and the reasons why the requester believes that the disputed information should be amended.

§ 9801.304 Response to appeal of adverse determination on amendment; disagreement statements.

(a) Response timing. The Chairperson should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the requester within the 30-day period.

(b) Amendment granted. If the Chairperson determines that the record(s) should be amended in accordance with the requester's request, the Chairperson will take the necessary steps to advise the requester and to direct the appropriate system manager:

(1) To amend the record(s); and

(2) To notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) Denial affirmed. If the appeal decision does not grant in full the request for amendment, the decision letter will notify the requester that the requester may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth their reasons for disagreeing with the decision.

(d) Requester's disagreement statement. A requester's disagreement statement must be concise. CIGIE has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(e) Provision of requester's disagreement statement. In any disclosure of information about which an individual has filed a proper statement of disagreement, CIGIE will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

§ 9801.305 Assistance in preparing request to amend a record or to appeal an initial adverse determination.

Requesters may seek assistance in preparing a request to amend a record or an appeal of an initial adverse determination, or to learn further of the provisions for judicial review, by contacting CIGIE's Privacy Officer by email at privacy@cigie.gov or by mail at Privacy Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street, NW, Suite 825, Washington, DC 20006.

Dated: November 23, 2016

Michael E. Horowitz,

Chairperson of the Council of the Inspectors General on Integrity and Efficiency.

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